

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RALPH OYAGUE,

Petitioner,

– against –

CHRISTOPHER ARTUZ,

Respondent.

ORDER

98-CV-6372

03-MISC-66

JACK B. WEINSTEIN, Senior United States District Judge:

Petitioner moves under Rule 52(b) of the Federal Rules of Civil Procedure to vacate the court's judgment of December 12, 2008, denying petitioner's Rule 60(b) motion. He contends that "plain error was made by [the court's] determination for petitioner to correct overt mistakes made in the transcript of a telephonic hearing on December 10, 2008 . . . which this Court denied based on these erroneous transcripts." Mot. to Vacate J. Under Rule 52(b) of the F.R.C.P., filed June 1, 2010. Respondent opposes the motion.

By order of July 26, 2010, the parties were directed to indicate whether an evidentiary hearing was warranted in light of the errors alleged in petitioner's Rule 52(b) motion. Submissions on this issue were received from both petitioner and respondent.

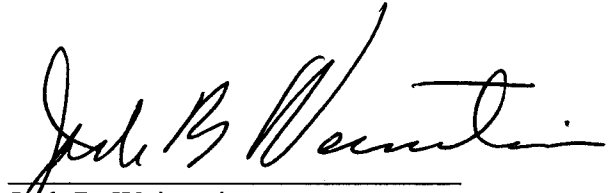
Petitioner is not entitled to relief under Rule 52(b). Petitioner's original habeas petition was filed on October 19, 1998. Counsel was appointed to represent petitioner. Argument was heard on July 28, 2003. By Memorandum, Order & Judgment of July 28, 2003, the petition was denied, but a certificate of appealability was granted. The judgment was affirmed by the Court of Appeals for the Second Circuit on March 1, 2005. Petitioner then challenged the denial of habeas pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Argument was heard on

December 10, 2008. By Memorandum, Order & Judgment of December 12, 2008, the Rule 60(b) motion was denied. An appeal of that judgment was dismissed by the appellate court on June 9, 2009.

The court has reviewed the parties' submissions in connection with petitioner's present motion, as well as the extensive record in this habeas proceeding. An evidentiary hearing is not warranted. Petitioner's Rule 52(b) motion is untimely, and is without any basis in fact or law. The errors complained of by petitioner were not the basis for denial of his Rule 60(b) motion.

The motion is denied. The clerk of court shall send a copy of this order to petitioner.

SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Date: August 11, 2010
Brooklyn, New York